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EXTRAORDINARY

PART II—Section 3

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No. 167] NEW DELHI, TUESDAY, DECEMBER 16, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 16th December, 1952

S.R.O. 2049.—WHEREAS the election of the persons named in the Schedule to the Commission's Notification No. 19/261/52-Elec.III, dated the 18th August, 1952, as members of the Legislative Council of the State of Madras, by the members of the Madras Legislative Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri U. C. Subramania Bhatt of 'Dwarka' Arya Samaj Road, Mangalore, South Kanara District;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of sections 86 and 87 of the said Act, for the trial of the Election Petition calling in question the aforesaid election has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MADRAS

Thursday the 11th day of December, 1952

PRESENT:—Sri K. B. Venkatachala Ayyar	Chairman.
Sri Syed Imamuddin	} Members.
and Sri K. Chandrasekharan	
ELECTION PETITION No. 261/1952	
Sri U. C. Subramania Bhatt	Petitioner.
Vs.	
Sri Abdul Hameed Khan and others	Respondents.

This petition coming on for hearing on 20th November 1952, 25th November, 1952, 3rd December 1952 and 4th December 1952, in the presence of the Government pleader representing the Advocate-General, Mr. K. Srinivasa Rao for the petitioner, Messrs. K. Subramaniam and K. S. Veeraraghavan for Respondents 6 and 12, Mr. N. Sundara Iyer for Respondent 13, Mr. V. V. Raghavan for Respondent 21, Mr. K. Ramachandra Rao for Respondent 29, Mr. S. Venugopal Rao for Respondent 32, Mr. B. Lakshminarayana Reddy for Respondent 40, Mr. T. Chengalvarayan for Respondent 45, and Respondent 48 in person, and the rest of the Respondents remaining *ex parte* and upon reading the petition, the statements of Respondents and upon perusing the relevant documents in support thereof and upon hearing the arguments of the Government Pleader and the advocates

on both sides and the petition having stood over till this day for orders, the Tribunal delivered the following Order:—

Issues

1. Whether the nomination of the petitioner was improperly rejected?
2. Is the election liable to be declared void?

ORDER

This petitioner, Sri U. C. Subramania Bhatt, was a candidate for the election of 24 members to the Madras Legislative Council by the members of the Madras Legislative Assembly at the election held in March 1952. His nomination paper was filed on the 12th March, 1952. He being a resident of Mangalore, the nomination paper was actually presented to the Returning Officer by Sri M. Rajeswara Rao, the proposer. Along with the nomination paper, the latter also produced a printed copy of the electoral roll of the Mangalore City Constituency of the Madras Legislative Assembly. It was represented to us—and that was not challenged—that the Mangalore City Constituency is divided into several Units or Blocks. The printed copy of the electoral roll that was produced relates to Block No. XV and the name of the petitioner finds a place therein, being serial No. 26. What happened on the 12th is a matter on which there is some controversy and it will be referred to later. The date of scrutiny was the 14th of March, and on that date, the Returning Officer made the following order on the nomination paper: "Time given till 3 P.M. on the 16th for producing certified extract from the electoral roll". The certified extract was not produced on the 16th and the Returning Officer rejected the nomination paper on the same date by an order which runs as follows:—"Rejected. Certified extract from the electoral roll is not produced." It has to be mentioned that neither the petitioner nor the proposer nor anyone else on behalf of the petitioner was present either on the 14th or on the 16th. The 16th of March was a Sunday and it is alleged by the Petitioner that he attempted to produce the extract on the next day, viz. the 17th, but he was informed that the nomination paper had been rejected on the 16th itself. These are the facts.

2. The question that arises for decision is whether the rejection of the petitioner's nomination paper by the Returning Officer was improper. As the decision in this case, may have a far reaching effect, we thought it necessary to hear the Advocate-General, and a notice under section 89 of the Representation of the People Act (XLIII of 1951), (hereafter referred to as the Act) was issued to him. In accordance with it, the Government Pleader appeared on behalf of the Advocate-General, and we heard his arguments also on the points arising in this case.

3. Section 39 of the Act is the section dealing with elections to the Council of States and Legislative Councils. Under sub-section (4) of section 39, the provisions of sub-sections (1), (3), (4), (5) and (7) of section 33 and sections 34 to 38 are made applicable to such elections. The procedure to be followed on the presentation of a nomination paper is laid down in section 33(5). Under this the Returning Officer is required to "satisfy himself that the names and electoral roll numbers of the candidate, his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls". Sub-section (6) provides that if the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency of which he is the Returning Officer he shall for the purposes of sub-section (5) "require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll". But this sub-section is not made applicable by sub-section (4) of section 39, to elections to Legislative Councils. Instead, there is the second proviso to sub-section (4) of section 39, the terms of which are somewhat different, and it provides: "that at the time of the presentation of the nomination paper, the Returning Officer may require the person presenting the same to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll". The constituency in this election comprises the elected members of the Madras Legislative Assembly and the electoral roll of the constituency is the list of elected members of the Assembly, maintained under sub-section (1) of section 152. This is clear from clause (a) of the third proviso to section 39(4). So far as the proposer and seconder in this case are concerned, the Returning Officer, by reference to this electoral roll, could easily find out whether they are qualified or not. It is only in regard to the petitioner that the Returning Officer may require the electoral Roll of the Assembly Constituency in which his name is included as an elector.

4. The Returning Officer Sri M. Surya Rao, and the proposer Sri Rajeswara Rao have both been examined as witnesses. They have given different versions. According to the evidence of Sri Rajeswara Rao, he was not asked by the Returning Officer when he presented the nomination paper to produce a certified extract from the electoral roll. He also deposed that in addition to the printed copy of the electoral roll which he produced, he had in his hand a certified extract of the relevant entry in the electoral roll. That is Ex. C. It shows that it was obtained in the month of February 1952. But he did not produce it before the Returning Officer as it was not called for. Sri Surya Rao, the Returning Officer, did not say in his evidence definitely that on the 12th he asked Sri Rajeswara Rao to produce a certified extract. His evidence is that in all cases in which a nomination paper was not accompanied by a certified extract, he as a general rule required the person presenting it to produce such a certified extract and in this case also he must have done so. It is, however, unnecessary to decide which of these two versions is correct.

5. The terms of the order of the Returning Officer made on the 16th rejecting the nomination paper have already been set forth. The ground on which the nomination was rejected was non-production of a certified extract of relevant entry in the electoral roll. The question, therefore, arises whether the Returning Officer is empowered under the provisions of the Act to reject a nomination paper on this ground. The grounds for rejection of a nomination paper are set out in section 36(2) of the Act. For the petitioner it was argued that non-production of a certified extract is not a ground for rejection, but for the respondents the contrary was maintained on the basis of clause (d) of section 36(2), namely, "that there has been a failure to comply with any of the provisions of section 33 or section 34". Is failure to produce a certified extract a failure to comply with any of the provisions of section 33? Leaving aside for the moment the omission in section 39 to include sub-section (6) of section 33 as one of the provisions applicable to elections to Legislative Councils, it would seem that such a failure is not a failure to comply with any of the provisions of section 33. The provisions of section 33 to be complied with are the provisions in sub-sections (1), (2), (3) and (4). Failure to produce a certified extract as directed by the Returning Officer is only a failure to comply with his order—an order which no doubt he is empowered to make under section 33(6). But it cannot be described as a failure to comply with the provisions of that section. A distinction has to be drawn between failure to comply with an order of the Returning Officer under sub-section (6) of section 33 and failure to comply with the provisions of sub-sections 1 to 4. If a nomination paper is defective in regard to any of the matters specified in sub-sections (1) to (4), that is a failure to comply with the provisions of the section. But failure to produce a certified extract called for by the Returning Officer stands on a different footing. It is a failure to comply with his order. Rejection of the nomination paper for such failure cannot be justified under section 36(2) (d), because it does not amount to failure to comply with the provisions of section 33. In the Basti District North-East General Rural Constituency case reported in Sen and Poddar, Indian Election Cases, (1935-51), page 106, it was held that a nomination paper could not be rejected on the ground of non-production of a certified extract of the relevant entry in the electoral roll. Though it was decided with reference to the rules in force in 1936, the position in our opinion is the same under the present Act also.

6. There is another aspect of the matter which may be referred to at this stage. The power given under section 33(6) is "to require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll". This provision is capable of the construction that the choice is left to the candidate and the production of one or the other is sufficient. In this case a copy of the electoral roll relating to the block or unit in which the name of petitioner finds a place was produced along with the nomination paper. Section 22-A of the Representation of the People Act (XLIII of 1950), makes a special provision with regard to electoral rolls first prepared under the Act, and by section 26 it is made applicable to Assembly Constituencies. Briefly stated, section 22-A empowers the preparation of electoral rolls for specified areas called electoral units and the electoral roll for a constituency may consist of electoral rolls prepared for one or more units and parts of units. Accordingly, there is a footnote (3) in the printed nomination form, which states that: "where the electoral roll is subdivided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in item No. 8". Column 8 relates to the 'serial number of the candidate in the electoral roll of the constituency in which his name is included.' In the nomination paper filed by the petitioner the entry made in this

column in "Serial No. 26 in the part of the electoral roll of the Mangalore Constituency under the heading Mangalore Municipality, Block No. 15, No. 15 Bendur Ward". The printed copy of the electoral roll which was filed along with the nomination paper is Ex. B and it relates to block No. XV. No doubt it is not a certified copy, but the correction slip attached to it shows that the original bears the signature of one, C. N. Menokki, who is designated as the Electoral Registration Officer. It was stated on behalf of the petitioner that such copies were supplied by Government to candidates and that Ex. B was obtained by him from the Electoral Registration Officer. This fact has not been challenged. The petitioner is No. 26 in the electoral roll. The production of the part of the electoral roll in which the name of the petitioner finds a place is sufficient in view of section 22-A read with section 26 of the Representation of the People Act (XLIII of 1950).

7. The orders passed by the Returning Officer on the 14th and 16th do not show that he considered this matter, nor do they indicate that he regarded the copy of the electoral roll that was produced as either unreliable or insufficient. His oral testimony does not also throw any light on this matter. We are unable to find any justification for the Returning Officer, on the materials placed before him, ignoring the electoral roll that was produced before him and calling for the production of a certified extract.

8. We have so far considered the question on the interpretation of sections 33 and 36 of the Act. But to this election to the Legislative Council these sections have to be read with section 39. Sub-section (6) of section 33 is one of the sub-sections excluded in section 39(4). It does not, therefore, apply to the election of members to the Legislative Council by the members of the Legislative Assembly. As mentioned earlier, the second proviso to section 39(4) has been enacted in place of section 33(6) as applicable to such elections. In construing section 36(2)(d), namely, failure to comply with any of the provisions of section 33, it has to be construed as section 33, sub-sections (1), (3), (4), (5) and (7) only in the case of such elections by reason of the provision in section 39(4). Under clause (b) of the third proviso to section 39(4), references to sub-section (2) of section 33 have to be read as references to the first proviso of section 39(4). But there is no such provision for reading references to sub-section (6) of section 33 as references to the second proviso to section 39(4). A consideration of these provisions clearly leads to the conclusion that whatever might be the position as regards other elections, in the case of elections to Legislative Councils, the Returning Officer is not empowered under section 36(2)(d) to reject a nomination paper for non-production of a certified extract.

9. It was, however, suggested by Sri K. Ramachandra Rao, who appeared for one of the respondents that the order of the Returning Officer could be brought under section 36(2)(a). The same argument was advanced by the learned Government pleader also. We are unable to accept this contention. No objection was raised to the petitioner's nomination by any of the other candidates. It was rejected by the Returning Officer on his own motion. It is difficult to construe the order as it stands as one rejecting the nomination paper under section 36(2)(a) on the ground that the petitioner "is not qualified to be chosen to fill the seat under the Constitution or this Act". The only reason mentioned in the order of the Returning Officer is non-production of the certified extract. It does not in the least indicate that by reason of such non-production the Returning Officer came to the conclusion that the petitioner was not qualified to stand for election. Further, if the question is one of qualification, a certified extract is not the only evidence which the Returning Officer was entitled to consider to prove the petitioner's qualification. No doubt under section 36(7) production of a certified extract is conclusive evidence to prove the right of the person named therein to stand for election. But it does not exclude other evidence. Such evidence may not have the conclusive effect of a certified copy of an entry in the electoral roll, but it cannot be ignored or brushed aside. As a matter of fact, the copy of the printed electoral roll, Ex. B, was before the Returning Officer. There is nothing to show that he considered it insufficient or unreliable nor is there anything to show that he made any enquiry in regard to this matter though under section 36(2) it was obligatory on him to hold at least a summary enquiry. Lastly, the respondents do not contend that the petitioner is not qualified to stand for election. Besides the copy of the electoral roll Ex. B, there is also a certified extract of the relevant entry in the electoral roll, Ex. C, which has now been produced before us. From these it is clear that the petitioner is an elector in the Mangalore Constituency of the Legislative Assembly. This places the matter beyond dispute, and there could be no doubt as to his being qualified to stand for election. In the circumstances, the only conclusion possible is that the rejection of the petitioner's nomination paper by the Returning Officer was improper.

10. Under section 100(1)(c) of the Act the election has to be declared wholly void "if in the opinion of the Tribunal the result of the election has been materially affected by the improper acceptance or rejection of any nomination." A clear distinction has been drawn in decided cases between improper rejection of a nomination paper and its improper acceptance. In regard to improper rejection it has been uniformly held that there is a strong presumption that the result of the election has been materially affected, because the electors are deprived of the right to vote for a candidate who is qualified to stand for election. It is sufficient to refer to *Batala Shik Rural Constituency Case* (Sen and Poddar, *Indian Election Cases*, 1951)—page 122, at pages 127 and 128 and to the cases cited therein. The presumption has not been rebutted in this case.

11. We have given our deep consideration to the consequences of declaring the election in this case wholly void. This consequence, though serious, cannot be avoided in view of section 100(1)(c) of the Act.

12. In the view we take, it is unnecessary to consider the argument for the petitioner based on section 10 of the General Clauses Act (X of 1897). But it may be observed that as deposed to by the Returning Officer, his Office was kept open and was working on the 16th. Further, the production of a certified extract in accordance with the order of the Returning Officer cannot be regarded as an act directed or allowed to be done on a certain day or within a prescribed period by any Act or Regulation so as to attract the application of section 10 of the General Clauses Act.

13. In the result the petition is allowed, and the election declared wholly void. Since the election is set aside on the ground of improper rejection of the nomination paper by the Returning Officer and for no fault of the respondents, the proper order in this case will be to direct both parties to bear their own costs. It is ordered accordingly.

Dictated to the Shorthand-Writer and pronounced in open Court this the 11th day of December 1952.

(Sd.) K. B. VENKATACHALA AYYAR.

(Sd.) SYED IMAMUDDIN.

(Sd.) K. CHANDRASEKHARAN.

[No. 19/261/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

